

Memo

To: Advisory Board Member

From: David M. Wolpin, Village Attorney's Office

Date: April 10, 2010

Subject: Sunshine Law

I. SUNSHINE LAW

A. The Provisions of the Law

The Florida Sunshine Law is provided by Section 286.011, Fla. Stat., entitled "Public Meetings and Records; Public Inspection; Criminal and Civil Penalties" and provides in subsection 1 thereof as follows:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings, open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings. (emphasis added)

B. Applicability

The Village Council, as well as committees, **advisory boards** or commissions created by the Council, must comply with the Sunshine Law. The Sunshine Law prohibits two or more members of the same Council, **board** or body from discussing (interchange of ideas) any item or matter of public business which may come before the body upon which those two or more members both serve, except in an open public meeting, duly noticed, for which minutes are kept. Compliance with the Sunshine Law requires that reasonable notice of the meeting be given; that the meeting be open to the public; and that minutes of the meeting be kept and provided.

It should be noted that the Sunshine Law also applies to advisory boards and to **ad hoc committees which are created for particular purposes**. For example, if a screening committee

were established and composed of risk management directors from adjoining communities to help select a risk management director for the Village, the Sunshine Law would apply to such ad hoc committee, unless the committee was confined to performing strictly a fact-finding role. Once an ad hoc committee is given the authority to make recommendations, screen candidates or create a short list, it is considered that the committee has gone beyond a fact-finding status and must comply with the Sunshine Law. See Krause v. Reno, 366 So.2d 1244 (Fla. 3d DCA 1979)

The wide sweep of the Sunshine Law forbids government board members from taking actions which may seem perfectly reasonable and be done with the best of intentions. For example, two or more members of the same board may attend a social function, only if any discussion of any item which may come before the board is strictly avoided, or the social function complies with the Sunshine Law requirements of public notice, public access and the provision of minutes of the meeting. Likewise, members of the same board may attend a seminar or lecture as members of the audience, without complying with the Sunshine Law provisions, so long as any interchange of ideas between board members upon any matter which may come before the board is strictly avoided.

C. Example of Situations Which May Arise

An illustrative example may be helpful. If two or more members of the Council were to attend a meeting of a civic association, it would not be advisable for either of the Councilmembers to engage in a discussion or presentation at such meeting (upon any matter which may come before the Council) in the presence of the other Councilmember, unless the meeting complies with the requirements of the Sunshine Law. If Councilmembers attend such a meeting which has not been duly noticed, and one Councilmember proceeds to speak, the other Councilmembers should absent themselves from the room.

D. Recommendations

The following recommendations are respectfully offered to Councilmembers in an effort to assist in continued compliance with the Sunshine Law. **These recommendations would likewise apply to Village boards and committees and the members of such boards and committees.**

1. Do not pass around a memorandum from one member of the Council to another for signature, initial or check-off indicating approval or disapproval of a proposal. This may be viewed as an unlawful meeting.

2. Do not hold a social luncheon or other social gathering of two or more members of the Council, which is not open to the public and duly noticed, unless any discussion of the business of the Council is strictly avoided.

3. Do not utilize a staff person or any third party to create an indirect discussion or interchange between two or more Councilmembers on Village business.

4. Do not privately poll or canvas other Councilmembers by telephone or otherwise to obtain their approval or lack of objection to the business of the Council. (Staff should also avoid this since Councilmembers may ask what other members said and the staff response may create an

indirect discussion of the public business by two or more members. Nor should staff use this approach to obtain a piece-by-piece decision of the Council.)¹

5. Even if only giving or seeking information, a Councilmember cannot talk to another member of the same Council about any Village matter which is within the scope of the business of such Council that may come before such members, except at a duly-noticed public meeting. **One Council or advisory board member should not write to or copy another member of the same body on which the writer serves on a matter within the jurisdiction of the body, since this may invite a prohibited interchange of ideas if the recipient who serves on the same body replies.** (A Councilmember or advisory board member may prepare a memorandum for inclusion in a public meeting Agenda).

6. A Councilmember may discuss Village business with an individual member of a different Village board not composed of members of the Council, so long as he or she does not go from one member of that board to another member of that board communicating what has been said.

7. Please do not proceed when in doubt about whether a proposed action is allowed under the Sunshine Law. Request the Village Attorney's opinion. Leave the room, if necessary, and protect yourself and the Village.

8. Avoid making inspection trips with other Councilmembers. Since discussion may easily ensue, reasonable public notice must be provided.

9. Do not forget that for all required public meetings, reasonable notice must be given, public access must be allowed, and minutes must be made for public inspection.

10. Be advised that the State Attorney General opined that the Sunshine Law applies to the action of just one council, commission or board member when that member has been delegated a portion of the decision-making authority by the body upon which he serves. The Attorney General has determined that if a Councilmember has been authorized, formally or informally, to exercise any decision-making authority on behalf of the Council, such as approving or rejecting certain contract provisions, he or she is acting on behalf of the Council and such meetings are subject to the Sunshine Law. See Attorney General Opinion 90-17.

E. Necessity for Compliance

Compliance with the Sunshine Law is vital. Aside from potential invalidation of the municipal action taken, the statute contains sanctions for non-compliance. A knowing violation is punishable as a misdemeanor of the second degree by imprisonment for 60 days and a fine of up to \$500. Pursuant to a 1985 amendment to the statute, even an unknowing and unintentional violation

1/ This does not preclude the Village Manager or Village Attorney from separately asking each Councilmember his or her position on an issue, so long as such process is not a substitute for any required consideration as a body and the thoughts of the members are not circulated through a liaison approach.

may result in a non-criminal infraction punishable by a fine not exceeding \$500.

The goal of the Sunshine Law is to forbid members of a government board from secretly dealing with the public business. The statute has been broadly interpreted by the courts so as to achieve that goal. Councilmembers and other board members must utilize great caution, lest their public service be rewarded with fines, penalties and unnecessary aggravation.

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